

Agenda

Item #11



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: November 16, 2008

Re: Advice on Issues of Joint Advertisements and Mailers, and Disclosure Statement on Signs

In October, the Ethics Commission received four complaints from Democratic candidates concerning joint advertisements in the Eastern Gazette purchased by Sen. Douglas M. Smith, Representative-Elect Paul T. Davis, Sr. and two other Republican candidates. The complaints also raised the handwritten disclosure statements on some of Sen. Smith's and Mr. Davis' campaign signs. Two of the complainants did not see the handwritten statements until they were very close to the signs and found the disclosure statements to be illegible. I have attached three photographs of the candidates' signs and two of the joint advertisements.

The complainants withdrew their complaints, but requested that the Commission provide better guidance to candidates in the future to avoid confusion.

"Paid For" Disclosure on Signs

I have attached the legal requirement to include a disclosure statement on campaign signs (21-A M.R.S.A. § 1014), and the advice from the Commission staff in the 2008 Candidate Guide.

The Commission staff receives a large number of questions regarding compliance with the "paid for" disclosure requirements on hand-made signs and on commercially printed signs that are missing the disclosure statement. In these circumstances, the candidates want to know what is necessary for them to comply with the requirement. If you are comfortable with it, the staff would like to offer the following advice in the Candidate Guidebook:

The Commission recommends that hand-made signs display the disclosure statement in the most clear and conspicuous manner possible. If a commercially printed sign is missing the disclosure statement or if the disclosure statement is not stenciled or painted on the sign, the Commission recommends that the disclosure statement be printed on laminated paper or cardstock or on labels or stickers by hand or

commercial printer. The disclosure statement should be attached to the sign using a method that will resist weather conditions for the six-week pre-election period (e.g., staples, glue, or strong transparent tape). The disclosure statement should be visible from a distance, and legible from a distance of two feet. If a home or commercial printer is not used, the Commission recommends that the statement be hand-printed, rather than handwritten.

Joint Advertisements

The four Republican legislative candidates decided to buy the attached joint advertisements in the Eastern Gazette newspaper. The advertisements state that they were "Authorized by the candidates and paid for by Doug Smith for Senate" The campaigns opted for this disclosure statement because Doug Smith was the candidate who actually paid the Eastern Gazette and sought reimbursement from the other candidates. This caused the Democratic complainants to be concerned that Doug Smith was using his Maine Clean Election Act funds to benefit the other candidates.

Generally, when the Commission staff has received questions about joint expenditures, the staff has left it to the candidates to decide how to structure their payments to the vendor. Given the confusion that arose in this case, however, it may be beneficial for the Commission to provide more specific advice to candidates regarding:

- whether the "paid for" disclosure must include the addresses of all the candidates who paid for the advertisement in order to comply with 21-A M.R.S.A. § 1014;
- whether the candidates must make separate payments to the vendor, or whether a single candidate may purchase the advertising with other candidates reimbursing the purchaser; and
- whether MCEA candidates who purchase a joint advertisement should provide specific information on Schedule B of their campaign finance reports (e.g., "joint advertising in Eastern Gazette") to avoid the appearance that they are subsidizing each other's campaigns.

Thank you for your consideration of this memorandum.

21-A MRSA § 1014

PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee that is made through a broadcasting station is not required to state the address of the candidate or committee that financed the communication. *

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

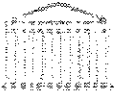
3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

4. Enforcement. An expenditure, communication or broadcast made within 20 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. The person who financed the communication or who committed the violation shall correct the violation within 10 days after receiving notification of the violation from the commission. An expenditure, communication or broadcast made more than 20 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within 10 days after the person who financed the communication or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.



CHAPTER 21

Disclosure on Campaign Communications

Disclosure on Campaign Communications

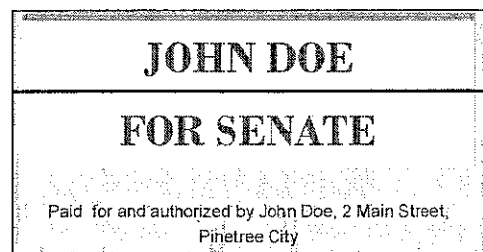
Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, publicly accessible websites, direct mails or other similar types of general public political advertising, or through flyers, handbills, bumper stickers and other non-periodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee, or their agents, must clearly and conspicuously state that the communication has been so authorized. The communication must also clearly state the name and address of the person who made or financed the expenditure for the communication.

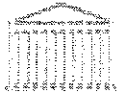
In addition, these requirements apply to any communication that names or depicts a clearly identified candidate and that is disseminated to voters in the last 21 days before the primary election or in the last 35 days before the general election.

The following are examples of suitable attribution statements for political communications financed:

By a Candidate:

- Paid for and authorized by John Doe, 2 Main Street, Pinetree City
- Paid for and authorized by the candidate, 2 Main Street, Pinetree City (where the candidate's full name is clearly stated in the communication)



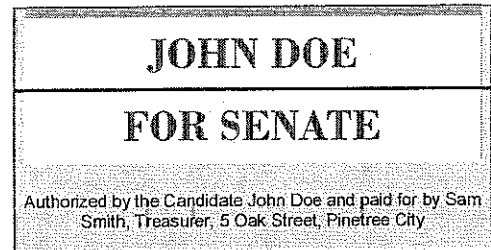


By a Candidate's Political Committee:

- Authorized by the Candidate and paid for by the Committee to Elect John Doe,
2 Main Street, Pinetree City

By the Candidate's Agents:

- Authorized by Candidate John Doe and paid for by
Sam Smith, Treasurer, 5 Oak Street, Pinetree City
- Paid for by the Candidate and authorized by John
Jones, Chairman of Committee to Reelect John
Doe, 1 Cool Street, Pinetree City



Communications Exempt from Disclosure

Certain items are exempt from the disclosure requirement because of their small size: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, and tickets to fund-raisers. The Commission may exempt similar items if it determines those items are too small and, therefore, it would be unnecessary to include the required disclosure.

Automated Telephone Calls

Prerecorded automated telephone calls and scripted live telephone calls that name a clearly identified candidate during the 21 days before a primary election or 35 days before a general election must include the name of the person who made or financed the communication, except that the disclosure is not required for prerecorded automated calls paid for by the candidate using the candidate's voice and are made in support of that candidate.

Communications Not Authorized by the Candidate

Similar requirements apply to communications that are paid for by third-parties such as political action committees and party committees and that are not authorized by the candidates. Those communications must disclose the person who made or financed the communication and that the communication was not authorized by the candidate or campaign.

DOUG
SMITH
STATE SENATE

VOTE FOR COMMON SENSE
FAMILY
DAVIS
MAINE HOUSE

100

11/10/1918

1900

This is a high-contrast, black and white image showing a textured surface. The texture is composed of numerous small, dark, irregular shapes, possibly fibers or ink splatters, distributed across a lighter, grainy background. The overall appearance is that of a close-up photograph of a material like paper, fabric, or a book's endpaper. The lighting is harsh, creating deep shadows and bright highlights that emphasize the surface irregularities.

Authorized & Paid for by the Candidate
Dorinda Hathaway, Treasurer, DO BOX 325
Dover-Foxcroft, ME 04426



FREE

Postmaster: Send no money
95-47488-001
U.S. Postage Paid
Dover, ME
Permit No. 37

The Eastern Gazette

Your Home Town Advantage

Volume 156 No. 41

Copyright 2008 The Eastern Gazette, Inc.

October 11 - 17, 2008

ABBOTT HILL KIMBLERS

Start Page One



★★★★★
A Team You Can Trust

✓ **Doug Smith**

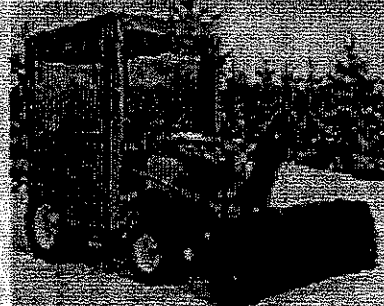
✓ **Paul Davis**

✓ **Doug Thomas**

✓ **Peter Johnson**

Authorized by the candidates and paid for by
Doug Smith for Senate, Donna Hathaway, Treas.
P.O. Box 325, Dover-Foxcroft, ME 04426

 **Husqvarna**



**GIFT CARDS
AVAILABLE**

**Financing
Available**

**Are You
Ready
to Move
Snow?**

**Snowblowers
available for
most size
tractors.**

**Come in
and check
them out!**

SNOW'S SAW SHOP

Atkinson Corner, U.S.A 554-7763/800-540-7297
Winter Hours: 7 AM - 5 PM WEEKDAYS, 7 AM - NOON SATURDAY

ATTACHEMENT 1

FREE

The Eastern Gazette

Your Home Town Advantage

Volume 156 No. 42

October 18-24, 2008

Volume 156 No. 42

October 18-24, 2008

Photo: Lisa E. Hunt / Mountain View Spokesman, Clark Douglas Spokesman / PRINCEA Youth Center, 19001 Portsmouth, New York, 12054. Photo: PRINCEA Youth Center, 19001 Portsmouth, New York, 12054. Photo: PRINCEA Youth Center, 19001 Portsmouth, New York, 12054.

Donations of First Aid Kits to the PRINCEA Youth Center
 The PRINCEA Youth Center has announced that it will be accepting donations of first aid kits. The center is located at 19001 Portsmouth, New York, 12054. The center is a non-profit organization that provides a variety of services to the community. The center is currently accepting donations of first aid kits for its youth center. The center is located at 19001 Portsmouth, New York, 12054. The center is a non-profit organization that provides a variety of services to the community. The center is currently accepting donations of first aid kits for its youth center. The center is located at 19001 Portsmouth, New York, 12054.

For Maine State Senate and House

PROVEN TAXPAYER FRIENDLY

✓ Doug Smith

✓ Paul Davis

✓ Doug Thomas

✓ Peter Johnson

Endorsed by the candidates and paid for by
 Doug Smith, Paul Davis, Doug Thomas, Peter Johnson
 19001 Portsmouth, New York, 12054

LEAF BLOWERS

Starting at \$199.99

LEAF BLOWERS

Starting at \$149.99

Financing Available

SNOW'S SAW SHOP

19001 Portsmouth, New York, 12054

**1250 West Main Street
Dover Foxcroft, Maine 04426
207.636.7438
Fax 207.636.7457**